

IN THE
United States
Court of Appeals
FOR THE NINTH CIRCUIT

WILLIE BILL GANT, alias Wiley Gant,
and ULYSSES GANT, alias Junior Gant,
Appellants,

v.

UNITED STATES OF AMERICA,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

HONORABLE WILLIAM J. LINDBERG, *Judge*

BRIEF OF APPELLEE

CHARLES P. MORIARTY
United States Attorney
Western District of Washington

MURRAY B. GUTERSON
Assistant United States Attorney
Attorneys for Appellee

OFFICE AND POST OFFICE ADDRESS:
1012 UNITED STATES COURT HOUSE
SEATTLE 4, WASHINGTON

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BRIEF OF APPELLEE

I. STATEMENT OF JURISDICTION

The appellants, Willie Bill Gant, alias Wiley Gant, and Ulysses Gant, alias Junior Gant, were indicted in the District Court of the United States for the Western District of Washington, Northern Division, in Cause No. 49329, on December 14, 1955. The

accusations against both appellants were identical, and were contained in three counts as follows:

“The Grand Jury charges:

“COUNT I

“That during the period between March 10, 1955, and July 20, 1955, at Seattle, within the Northern Division of the Western District of Washington, WILLIE BILL GANT, alias Wiley Gant, and ULYSSES GANT, alias Junior Gant, wilfully, knowingly and unlawfully, did attempt to encourage and induce, directly and indirectly, and did encourage and induce, directly and indirectly, the entry into the United States of America of an alien female person, to-wit, Martha Marie Rose Harand, such alien not being lawfully entitled to enter or reside within the United States of America.

“All in violation of Section 1324(a), Title 8, U.S.C.

“COUNT II

“That during the period between July 20, 1955, and October 12, 1955, at Seattle, within the Northern Division of the Western District of Washington, WILLIE BILL GANT, alias Wiley Gant, and ULYSSES GANT, alias Junior Gant, wilfully, knowingly and unlawfully, did conceal, harbor and shield from detection and did attempt to conceal, harbor and shield from detection an alien female person, to-wit, Martha Marie Rose Harand, such alien not being lawfully entitled to enter or reside within the United States of America.

"All in violation of Section 1324(a), Title 8, U.S.C.

"COUNT III

"1. That on or about July 20, 1955, Martha Marie Rose Harand, an alien woman or girl, to-wit, a citizen of the Dominion of Canada, entered the United States of America from a country, party to the arrangement adopted July 25, 1902, for the suppression of the White Slave Traffic, to-wit, from the Dominion of Canada.

"2. That within three years after July 20, 1955, to-wit, during the period between July 20, 1955, and October 12, 1955, at Seattle, within the Northern Division of the Western District of Washington, WILLIE BILL GANT, alias Wiley Gant, and ULYSSES GANT, alias Junior Gant, did keep, maintain, control, and harbor in a house or place for the purpose of prostitution and other immoral purposes, Martha Marie Rose Harand, an alien woman or girl, and did fail within thirty days after commencing to keep, maintain, control, and harbor the said Martha Marie Rose Harand in a house or place for the purpose of prostitution and other immoral purposes, to file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States of America, the port or place through which she entered, her age, nationality and parentage, and concerning her procurement to come to this country within the knowledge of such person.

"All in violation of Section 2424(a), Title 18, U.S.C."

Jurisdiction was conferred upon the District Court of the United States for the Western District of Washington, Northern Division, pursuant to the provisions of Title 18, United States Code, Section 3231. Inasmuch as the Indictment charged the appellants with the acts of inducement and concealment occurring at Seattle, Washington, and failure to file a statement concerning such acts during the period in which the named alien female was kept in Seattle, venue was properly laid in said district court under the provisions of Rule 18 of the Federal Rules of Criminal Procedure and Title 18, United States Code, Section 3237.

Trial by jury was had, and verdicts of guilty were returned against both appellants on all three counts on April 10, 1956. On April 30, 1956, the Court denied motions for new trial interposed on behalf of both appellants, and entered judgment against both.

The jurisdiction of this Court to review the judgment of the district court is conferred by the provisions of Title 28, United States Code, Section 1291.

II. STATEMENT OF THE CASE

Any references to testimony to be made herein will be designated by the abbreviation (R.T.), indicating Reporter's Transcript, and page number.

On or about July 19, 1955, one Martha Marie Rose Harand, born October 22, 1937, at Regina, Saskatchewan, and being the female named as victim in all counts of the Indictment, traveled from Vancouver, British Columbia, Canada, to Seattle, Washington (R.T. 49). Miss Harand testified that during the period from March 10, 1955, until the 19th of July, she resided at the New Star Rooms in Vancouver (R.T. 36-37). The witness, Harand, had been deported from Seattle, Washington, to Vancouver, B. C., on September 24, 1954, as an alien (R.T. 21, 124), and as such was not lawfully entitled to enter the United States on or about July 20, 1955 (R.T. 194).

Miss Harand testified that in early April 1955 she received a telephone call at the New Star Rooms from appellant Willie Bill Gant, alias Wiley Gant (R.T. 38-40), whose voice she recognized inasmuch as she had lived with him intermittently in Vancouver between October 1954 and March 1955 (R.T. 25). The call came from Yakima, Washington, and the appellant, Willie Bill Gant, alias Wiley Gant, said that he wanted her to come to the United States and further that there was quite a bit of money in Yakima (R.T. 40-41).

The victim, Harand, testified that she did not leave Vancouver following this conversation, and further that about two weeks later she again received

a phone call from the same appellant (R.T. 42). He inquired as to why she had not come to Yakima, and "told me to come down this week-end to Seattle" (R.T. 42).

In May of 1955, the witness, Harand, testified to receiving a call from appellant Ulysses Gant, alias Junior Gant (R.T. 43-44), in which Ulysses Gant told her "he was very anxious to meet me, and he didn't have a girl friend, and him and I could get rich" (R.T. 44). Miss Harand stated that she would try and come to the United States if she could get across the border, to which Ulysses Gant replied, "if I did it once I could do it again" (R.T. 45).

The victim, Martha Marie Rose Harand, next testified that during June 1955 she again received a phone call from Willie Bill Gant, alias Wiley Gant (R.T. 46), and that during the course of that call she spoke with both Willie and Ulysses Gant. With respect to the conversation with Willie Gant, the witness testified as follows:

"A. Well, he asked me why I didn't come down to Seattle.

"Q. What did you say?

"A. I told him I couldn't make it; and he told me, 'Well, last week-end was pay week-end,' and I should come down.

"Q. And what did you say?

"A. I told him, well, I would try and make it. He told me to take a bus." (R.T. 46)

With respect to what was said between herself and Ulysses Gant during the same phone conversation, the witness testified as follows:

"A. He told me he was very anxious to see me.

"Q. What did you say?

"A. I told him I would like to see him, too; and he said, 'Well, you get on a bus and come down'." (R.T. 47-48).

With regard to the period between October 1954 and March 10, 1955, Miss Harand testified that she operated as a prostitute in Vancouver, B. C., while residing with Willie Gant, and further, that her customers were procured by Willie Gant, and that her earnings thereby were given to Willie Gant (R.T. 33). During this same period, the witness, Harand, testified that she had the following conversation with appellant, Willie Gant:

"A. Willie asked me to come down to the States.

"Q. What did you say?

"A. I says I couldn't come down because I was deported.

"Q. What did Willie say?

"A. He said, 'I could find a way'." (R.T. 36)

Miss Harand added that she and Willie Gant discussed this same matter "quite a few times" (R.T. 36),

and also that she told Willie Gant that she was born in Saskatchewan (R.T. 38).

Other testimony relating to appellant Willie Bill Gant's knowledge of Martha Harand's alienage was provided by Charles Campbell, a detective sergeant in the Vancouver Police Department (R.T. 312-316). He testified that on March 9, 1955, he went to Room 2, 956 Main Street, Vancouver, B. C., which room was occupied by Willie Gant and the victim, and that he advised Willie Gant as follows:

"A. I told Willie Gant that Marsha Harand was seventeen years of age, and he made no reply.

"Marsha said that her mother knew where she was, and knew what she was doing; and I asked her where her mother was, and she stated in Regina. That was the course of the conversation." (R.T. 316).

The victim, Martha Harand, testified that she was called by the name of Marsha as well as Martha (R.T. 17).

With regard to the period from July 20, 1955, to October 12, 1955, Miss Harand testified that continuously throughout that period she lived in various hotels or houses in Seattle, Washington, with either Willie Bill Gant or Ulysses Gant or both, and that she operated as a prostitute during that entire period (R.T. 53-87). She further testified that both appellants procured customers for her throughout that

period, and that all of her earnings were turned over to one or the other of them (R.T. 53-87).

Records of various Seattle hotels were introduced into evidence (R.T. 167; 179; 253) corroborating the witness Harand's narrative of where she stayed and when during this 84-day period she was with one or the other of the appellants. Rooming house records were also introduced for this same purpose (R.T. 224).

Three members of the United States Army, John L. Wiggins (R.T. 198-210), William E. Johnson (R.T. 258-271), and William M. McNeil, Jr. (R.T. 272-290), all testified to being solicited by appellant, Willie Bill Gant, sometime between September 27 and September 30, 1955, for the purpose of coming with him and paying for an act of sexual intercourse. All three testified to accompanying him and of recognizing the victim, Martha Marie Rose Harand, as one of the two girls to whom they were taken, and Wiggins and Johnson additionally testified to having intercourse with Miss Harand on that occasion (R.T. 205; 265).

The witness, Miss Harand, further testified that during August 1955, while living with appellant Ulysses Gant, alias Junior Gant, at the Sun Hotel that she and he had the following conversation:

"A. I asked him if he would get me any papers.

"Q. What did he say?

"A. He said he would go down as soon as he could, and try and get some." (R.T. 63).

She further testified that Ulysses Gant soon thereafter brought her a birth certificate of another person (R.T. 64). Continuing thereafter concerning this birth certificate provided by appellant Ulysses Gant, Miss Harand testified:

"Q. What happened with regard to it?

"A. It was filled in, and he said he was going to erase it, and typewrite my name on it. He erased it and gave it to me.

"Q. And what did you do with it?

"A. I kept it until Willie had ripped it up."
(R.T. 64)

Mr. Lawrence Augustine, Chief of Investigations for the Seattle District of the Immigration and Naturalization Service, produced and introduced into evidence the proper certification showing the non-filing, as of a date far beyond the 30-day period, of the record required in the charge as alleged in Count III (R.T. 135). The Court in instructions, and without exception, took judicial notice of Canada's participation in the arrangement of July 25, 1902, for the suppression of White Slave Traffic (R.T. 533).

During trial both appellants were represented by Mr. Robert M. Elias, an experienced trial lawyer with wide criminal trial familiarity. After trial, both appellants retained Mr. Theodore Locke, who repre-

sented them in all post trial motions, and at time of sentencing.

III. SUMMARY OF ARGUMENT

In the brief of both appellants, sections are labeled "Points Raised" and "Points Raised in Arguments", which sections correspond to specifications of error. Appellant Willie Bill Gant, alias Wiley Gant, sets forth two points, and appellant Ulysses Gant, alias Junior Gant, sets forth three points.

Upon consideration of these points and after careful reading of the arguments presented by each appellant, it appears that the only real contention raised by each is that there was insufficient evidence to convict. The Government takes the position that there was a wealth of evidence, both direct and circumstantial, which clearly supports the verdict.

IV. ARGUMENT

We have purposely attempted in our Statement of the Case to set out testimony and evidence of those matters which bear directly upon the various elements incumbent upon the Government to prove as to each appellant and on each count. These elements were included in the Court's charge to the jury, to which charge no exception was taken then, nor is any objection raised now.

As to Count I, the Government was required to prove that between March 10, 1955, and July 20, 1955, each appellant attempted to or did encourage and induce the named victim to come to Seattle, Washington, and that such encouragement and inducement was done wilfully, knowingly, and unlawfully. Further that during that period the victim was an alien not entitled to enter the United States, and that each appellant so knew (R.T. 528).

As to Count II, the Government was required to prove that between July 20, 1955, and October 12, 1955, each appellant did conceal, harbor, and shield or attempt to conceal, harbor, and shield the victim from immigration authorities and from observation to prevent her discovery as an alien. Also, that such conduct on the part of each appellant was done wilfully, knowingly, and unlawfully, and further that during the period involved the victim was an alien not entitled to reside within the United States, and that each appellant so knew (R.T. 529).

As to Count III, the Government was required to prove that the victim was an alien, that she entered the United States on or about July 20, 1955, from Canada, and that Canada was a party to the White Slave Traffic Suppression Act. Also, that within three years after the date of her entry, each appellant did

keep, maintain, control, and harbor her for purposes of prostitution, and that within thirty days after commencing so to do each appellant failed to file the statement required by law with the Commissioner of Immigration and Naturalization.

Without reiteration of the matters contained in our Statement of the Case, we respectfully submit that there is set out therein, not to mention all of the additional circumstantial matters disclosed by the full transcript, substantial evidence proving each element as to each appellant beyond all possible doubt.

There is of course direct evidence of actual verbal persuasion and inducement, as is shown by the language employed during the course of the various telephone conversations referred to in the Statement of the Case. There is, however, no direct evidence nor any actual showing of the physical concealing, harboring, or shielding of the victim herein. Because of this, the appellants may claim that there was a failure of proof as to Count II of the Indictment. In fact, appellants might argue that the very fact that the named alien female person engaged in acts of prostitution establishes quite pointedly that she was in the company of various members of the public at almost all times, and, arguably, such is completely inconsistent with any physical concealment or harboring.

In this regard, the law is clear that the statute involved concerns only the concealing, harboring, and shielding from the detection of immigration authorities, and in no sense refers to concealing, harboring, and shielding from ordinary members of the public. The case of *United States v. Smith* (C.A. 2, 1940), 112 F. 2d 83, 85, is exactly in point:

“That appellant harbored them cannot admit of doubt. True, the girls were permitted intercourse with certain members of the public, as is to be expected in their occupation. But ‘harbor’ in the context of the statute — ‘conceal or harbor * * * any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States’ — means only that the girls shall be sheltered from the immigration authorities and shielded from observation to prevent their discovery as aliens. *Susnjar v. United States*, 6 Cir., 27 F. 2d 223. This they certainly were.”

The question of the knowledge of each appellant as to the alienage of the named female alien is a matter which the Government was required to prove under the allegations of Count I and Count II. See *United States v. Mack* (C.A. 2, 1940), 112 F. 2d 290. It is for this reason that we have very carefully attempted to set forth the exact words used in the telephone conversations in order to show knowledge on the part of both appellants. Besides this, we, of course, have the evidence provided by Detective Sergeant Campbell and

by the victim herself regarding the knowledge which appellant Willie Bill Gant acquired during the period he resided with the victim in Vancouver prior to March 10, 1955.

Of similar significance, but with respect to the appellant Ulysses Gant, we have made reference to not only his actual language during the course of the phone conversations but also to what he said during the period that he and the victim were living together in Seattle, Washington.

V. CONCLUSION

As each appellant has been accorded a fair trial and has been convicted upon substantial evidence, we ask that the judgment be affirmed.

Respectfully submitted,

CHARLES P. MORIARTY
United States Attorney

MURRAY B. GUTERSON
Assistant United States Attorney

